No. 22366

JUN 19 1968

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

METROPOLITAN SAVINGS AND LOAN ASSOCIATION, a corporation, and FIDELITY SERVICE CORPORATION, a corporation,

Appellants,

vs.

WILLIAMS CONSTRUCTION CO., a corporation, and A. J. BUMB, Receiver,

Appellees.

APPELLANTS' REPLY BRIEF.

FILED

JUN 14 1968

WM. B. LUCK, CLERK

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APPELLANTS' REPLY BRIEF.

I.

Preliminary Statement.

Appellants Metropolitan Savings and Loan Association ("Metropolitan") and Fidelity Service Corporation ("Fidelity") submit this brief in response to the Answering Brief of Williams Construction Co. ("Williams").[1] Where the answer to a contention advanced by Williams embraces material set forth in Appellants' Opening Brief, Appellants will cite to and summarize such material herein rather than setting it forth *in extenso*.

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[1]There is another appellee in the within appeal, A. J. Bumb, the receiver of the subject property; but no brief has been filed on his behalf.

II.

Under California Law, Williams Has No Right to a Partial Reconveyance From Metropolitan's Deed of Trust.

In their Opening Brief, Appellants pointed out that under California law a trustor has no right to the partial reconveyance of property subject to a deed of trust in the absence of a provision in the deed of trust authorizing such a reconveyance; and that when the deed of trust does provide for a partial reconveyance, a trustor, in order to be entitled to such partial reconveyance, must comply with the conditions prescribed therefor in that deed of trust (Appellants' Op. Br. pp. 13-15).

In the instant case, the deed of trust expressly provided that Williams was entitled to the release of individual lots from Metropolitan's lien only if two conditions were satisfied: (1) the loan which Metropolitan's deed of trust secured was not mature; and (2) the loan was not in default. At the time of the entry of the order of the bankruptcy court authorizing partial reconveyances from Metropolitan's encumbrance, the loan was both mature and in default. Because the conditions were not satisfied, Williams had no right to a partial reconveyance.

Williams does not dispute Appellants' statement of the law, but makes two contentions in an effort to avoid its effect:

1. That, regardless of any right of Williams to secure the release of individual lots from the deed of trust to which the bankruptcy court may have succeeded, the instant case "involves the

power of the Bankruptcy Court to order a judicial sale of encumbered property, free of the encumbrance, and to determine the manner of sale appropriate in the circumstances" (Answering Brief of Appellee Williams Construction Company, p. 23). The argument is answered by Appellants in Sections III and IV, *infra*.

2. That the California courts have decided cases involving the right to the partial release of security from a lien on an "ad hoc" basis, and because this is a bankruptcy situation the California courts would, if given the opportunity, override the settled rule that the right to a partial reconveyance of security is governed by the terms of the security instrument. To quote Williams, "In a case in which the rights of the secured creditors can be protected,[2] and the rights of third parties are at issue,[3] there is considerable

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[2]This is a purely hypothetical assumption—the rights of Metropolitan in this case have manifestly not been adequately protected (See Sections IV and VI, *infra*).

[3]Throughout its brief, Williams seeks to picture itself as the solicitious protector of (presumably small and defenseless) unsecured creditors, while portraying Metropolitan as the corporate counterpart of the nineteenth century stage villain. It contends that this Court should dispose of the present appeal favorably to Williams in the interests of these anonymous but omnipresent third parties "who have created the value that exists in the property by cutting lots out of raw acreage, installing the curbs, paving the streets, putting in the underground utilities, and carrying out all of the other activities requisite to manufacturing lots" and "who will otherwise lose everything" (Answering Brief of Appellee Williams Construction Company, p. 12).

The argument is faulty for several reasons. First, the facts do not support it. There is no evidence in the record of which Metropolitan is aware to indicate either the source of the claims of these unsecured creditors of that a ruling in favor of Metropolitan would cause them to "lose everything." Further, and more fundamentally, the function of the bankruptcy court is to protect all interests in accordance with law and not to rule in accordance with a desire to equalize wealth.

> reason to believe the California courts would give effect to a release clause [notwithstanding the fact that the conditions for release contained in the release clause are unsatisfied]" (Answering Brief of Appellee Williams Construction Company, p. 26).

Insofar as the second argument is concerned, what Williams bases its conclusion on, except wishful thinking, is not clear; certainly the authorities cited by Williams do not support it.

The first case discussed by Williams in this connection is *Sacramento S.F.L. Co. v. Whaley,* 50 Cal. App. 125 (1920), in which the court held that the trustors were entitled to the reconveyance of a portion of their security, even though the loan was in default.

The difficulty with the *Whaley* case for Williams' purposes—a difficulty recognized by Williams[4]—is that the reconveyance was not in contravention of the terms of the deed of trust; rather, *it was expressly authorized by it.* The deed of trust did not limit the exercise of this right to the period that the loan was not in default, but rather, provided that:

> "Said mortgagee shall release any 10-acre lot or more from the lien of this mortgage upon the payment by the said mortgagee of One Hundred Twenty-five Dollars ($125.00) per acre for each acre so to be released." (125 Cal. App. 126).

Indeed, the issue before the court was whether the *fact of default itself* would vitiate the right to a partial release of security *authorized by the terms of the deed of trust.* There is nothing whatever in the case which suggests that contractual limitations upon the exercise

[4]"In this case [Whaley] the parties did not attempt to place any limitation on the operation of a release clause." (Answering Brief of Appellee Williams Construction Company, p. 24).

of the right to a partial reconveyance would not be enforced as stringently in a bankruptcy situation as in any other.

Another case relied upon by respondent is *Conley v. Poway Land & Inv. Co.*, 232 Cal. App. 2d 22 (1965), cited by Appellants on page 14 of their Opening Brief.

Williams' treatment of the *Conley* case is highly misleading because it indicates that the case upheld the right of a trustor to the release of property subject to a deed of trust in contravention of the terms of the applicable release provision. In fact the contrary is true.

The governing contractual provision, of which Williams conveniently ignores all but the first phrase, is as follows:

> " 'So long as the trustor be not in default concerning any of the covenants contained herein or with respect to the payments due on the promissory note secured hereby, a partial reconveyance may be had and will be given from the lien or charge hereof of any portion of the property hereinbefore described upon payment of an amount to apply on the principal of said note, based on a rate of $1,149.00 for each acre. . . . Trustor may at any time make a payment to Trustee for the purpose of securing a partial reconveyance in which event Trustee shall, without the necessity of any approval by Beneficiary or Beneficiaries or the securing of any other documents, make a partial reconveyance of such portion or portions of the property hereinbefore described as Trustor may request provided only so much acreage shall be reconveyed as Trustor has paid for at the rate mentioned in this paragraph . . .' " (232 Cal. App. 2d 25).

The trustor made the required payment before default but did not request a reconveyance until after a default had occurred. Hence, the question before the court was whether the occurrence of the default would have the effect of divesting the trustor of a right to a partial reconveyance which accrued upon the making of the required payment. The court held:

> "We interpret *the language of the deed of trust to mean* that no right to reconveyance would accrue while the principal was in default but that it has no application to such rights accrued before the default." (232 Cal. App. 2d 27; emphasis added).

In other words, all the court was doing was giving effect to the terms and conditions of the security instrument as it construed them. There is nothing whatever in the opinion to suggest a disposition on the part of the California courts to subvert the rule that the question of the right to the partial release of security from an encumbrance is governed by the terms of the encumbrance.[5]

Finally, Williams' treatment of *Bradbury v. Thomas,* 135 Cal. App. 435 (1933) can only be regarded as an admission of the weakness of his position. Williams quotes a passage from the opinion and characterizes that passage as indicating that the trial court might have reached a different conclusion had "equitable con-

[5]Furthermore, Appellants wish to emphasize, as they did in their Appellants' Opening Brief, that this is not a situation in which a secured creditor is attempting to exploit a mere technical noncompliance with conditions; the noncompliance with the conditions for partial reconveyance is gross (See Appellants' Op. Br. p. 15).

siderations" been before it (Answering Brief of Appellee Williams Construction Company, p. 24).

Appellants submit that no such inference can properly be drawn from the passage and that, in fact, the court was saying that in the absence of a contractual provision authorizing it, there is no way for a trustor to obtain the partial release of security from a lien.

In any event, this is the passage in question. The court can reach its own conclusion as to what it means:

> "It is obvious that the appellants relied solely on the release clause of the mortgage. This must be so, for it is the only provision which furnishes any force to their claim that they are entitled to have their title to 15 lots quieted against respondent's mortgage lien. Certainly, if the mortgage had contained no release provision there could have been no pretense on their part that they were entitled to have any of the mortgaged premises declared free from the mortgage lien." (135 Cal. App. 2d 442).[6]

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[6]How Williams can quote the statement from the *Bradbury* case "if the mortgage had contained no release provision there could have been no pretense on their [the mortgagors'] part that they were entitled to have any of the mortgaged premises declared free from the mortgage lien" and then argue that had there been no release provision in the Williams' deed of trust "it is rather clear that the court could have ordered a sale in parcels or lots" (Answering Brief of Appellee Williams Construction Company, p. 25) is frankly incomprehensible to Appellants. The *Bradbury* case makes it emphatically clear that it is only when there *is* a release provision that the mortgagor is entitled to the release of a portion of his security.

III.

The Powers of the Bankruptcy Court to Order the Sale of Encumbered Property Free and Clear of Liens and to Determine Whether the Sale of the Bankrupt's Property Shall Be in Bulk or in Parcels Are Powers to Determine the Procedure by Which the Estate Shall Be Liquidated; Neither Separately nor Together Do They Permit the Bankruptcy Court to Abrogate the Substantive Legal Rights of Secured Creditors.

Williams' principal defense of the action of Referee Kinnison in ordering the sale of individual lots free and clear of Metropolitan's deed of trust is that it involved the exercise of power conferred by Federal law and independent of any power acquired through succession to the rights of the bankrupt (or, in this case, debtor). Reduced to its essentials, what Williams is saying is that the powers of the bankruptcy court include the following:

1. The power to sell encumbered property, free and clear of liens;
2. The power to determine whether the assets of the bankrupt estate shall be sold in bulk or in parcels.

Ergo, in this case the bankruptcy court must have the power to order the sale of the lots in question individually, free and clear of Metropolitan's lien.

But, as Appellants pointed out in Appellants' Opening Brief, pages 10-11, 19-25, the power of the bankruptcy court to order the sale of property free of liens is the power to prescribe the procedure by which a secured creditor realizes upon his security, and to substitute another remedy *which is equally adequate and efficient*

for that of which the secured creditor would otherwise avail itself. Similarly, the power of the bankruptcy court to determine whether the property is sold in bulk or in parcels is merely the power to determine the procedure by which the estate of the bankrupt (or debtor) is liquidated. Neither of these powers invests the bankruptcy court with the power to impair *the substantive legal rights* of secured creditors; and the release of individual lots from Metropolitan's lien would necessarily involve such impairment.

The orders of the bankruptcy court were issued in a proceeding for an arrangement under Chapter XI of the Bankruptcy Act. The Bankruptcy Act defines an arrangement in §306(1) as "any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his *unsecured debts* . . ." (emphasis added). As stated in Collier on Bankruptcy, Volume IX, §7.05[4], "No provision of the [Bankruptcy] Act permits an arrangement proposed under Chapter XI to deal with the rights of secured creditors." In *Chafee County Fluorspar Corporation v. Athan*, 169 F. 2d 448 (10 Cir. 1948) the Court stated, "Since . . . only the rights of unsecured creditors of the debtor may be arranged, [citation], the [bankruptcy] court should not exercise its injunctive powers in a manner to alter the rights of the secured creditors of the debtor." (169 F. 2d 450). See *Securities and Exchange Commission v. United States Realty and Improvement Company*, 310 U.S. 434, 452-453 (1940); *United States v. National Furniture Company*, 348 F. 2d 390, 392 (1965). As set forth in Section IV, *infra*, the orders of the bankruptcy court herein clearly alter the rights of Metropolitan, a secured creditor.

IV.

The Orders of the Bankruptcy Court Impair Metropolitan's Substantive Legal Rights.

The reason that the orders in question do not provide Metropolitan with a remedy for realizing upon its security which is as adequate and efficient as that of which it could otherwise avail itself and impair Metropolitan's substantive legal rights are set forth in considerable detail in Appellants' Opening Brief, pp. 10-11, 22-25. Basically, the reasons are as follows:

1. Under the terms of its deed of trust, Metropolitan can, by causing a foreclosure under the power of sale, effect an immediate liquidation of its claim. Under the orders in question, the liquidation will be drawn out over a number of years, during which Metropolitan will be burdened with a frozen asset. (For a discussion of the particularly adverse consequences of such an asset upon a saving and loan association, see Appellants' Op. Br. pp. 28-30).
2. The security for Metropolitan's loan consists at the present time of a tract of substantially contiguous lots subject to development on an integral basis. The effect of the order that the lots are to be sold on an individual basis free and clear of Metropolitan's lien would be to transform the character of that security into an aggregation of non-contiguous lots not subject to such development.
3. Metropolitan made a loan to Williams of eight months' duration. The effect of the orders in question is to rewrite the loan into a loan for the duration of the time required to sell off the lots, probably a period of many years.[7]

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[7]The foregoing contrasts sharply with Williams' narrow, incomplete and misleading characterization of Appellants' position (Answering Brief of Appellee Williams Construction Company, p. 17).

Since Williams' answer to the foregoing consists in large measure of a recital of the findings of Referee Kinnison and argument based upon those findings, Appellants wish to emphasize that the instant appeal is not predicated upon the contention that the findings of fact entered by the bankruptcy court are erroneous.[8] The dispute between Appellants and Williams is not as to the facts but rather as to *the legal effect of facts which, in their material respects, are undisputed.* (While Williams argues that there is no evidence in the record to support certain facts allegedly relied upon by Appellants, as demonstrated *infra* Williams is wrong for one of two reasons: either there *is* such evidence, or the fact is not one upon which Appellants relied). Hence, rules which limit the role of an appellate court with respect to questions of fact resolved by the trier of fact have no application here.

Williams asserts that the order for the sale of the lots "was fully consistent with the intentions and the expectations of the parties at the time they entered the agreement." As evidence of the intent it cites the character of the lots and that under the terms of Metro-

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[8]Obviously Appellants do not accept findings such as "there is a substantial equity of the debtor in the said property" [C. T. p. 69, lines 31-32] or that "a sale of said lots free and clear of the lien of the respondent Metropolitan Savings and Loan Association will in no way impair any substantive right of said respondent" [C. T. p. 70, lines 10-13]. These, however, are not really findings of fact but, rather, conclusions as to the legal effect of facts which are the subject of other findings. While Appellants do feel that the findings entered by the bankruptcy court are defective for failure to find on the material issues, it is clear from the record that if such findings had been made they would have been in Appellants' favor. For example, there is no finding on the amount which the lots could be expected to bring if sold as a tract, and Metropolitan objected to the absence of such a finding [C. T. p. 63, lines 15-26]. The evidence that a sale on this basis would not yield a surplus over and above Metropolitan's lien is, however, undisputed [R. T. p. 310, lines 5-10].

politan's deed of trust, Metropolitan "valued each lot separately."[9] (Answering Brief of Appellee Williams Construction Company, p. 14).

Although the deed of trust does provide for the release of individual lots, the parties contemplated that such release would be permitted only in a "going" situation in which regular payments were being made on the indebtedness and the property was being sold off on a normal basis. This has little relationship to the contemplation of the parties in a salvage situation. Indeed, the limitations upon Williams' right to secure the release of individual lots—including a fixed date (the maturity date of the loan) after which no further release would be permitted, and a requirement that the loan not be in default—clearly indicate a desire and intent on the part of Williams *and* Metropolitan to preserve the tract character of the land in the event the project ran into difficulty.

Furthermore, the basis upon which the lots were to be sold relates to only one aspect of Metropolitan's intent. Did Metropolitan, which made a loan that by its terms was limited to one year, *intend* to make a loan that was to last for the duration of the sales program contemplated by the order for the sale of the lots—an indefinite period, but certainly one many times the original term of the loan? Williams' contention that the order for the disposition of the lots "was fully consistent with the intentions and the expectations of the parties" is just not true.

Williams' attempt to equate the tract to "two lots located in separate parts of the state" is so plainly con-

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[9]This is incorrect. The deed of trust did not purport to ascribe a value to the lots but only to prescribe the amount by which the principal indebtedness of Williams to Metropolitan would have to be reduced in order to secure the release of a given lot from Metropolitan's encumbrance.

trary to the facts as to be ludicrous (Answering Brief of Appellee Williams Construction Company, p. 14). The two pages of Williams' brief, pages 15 and 16, devoted to quoting findings of Referee Kinnison relating to such matters as the lot numbers, zoning, proximity to streets, elevation, topography, curbs, gutters and utilities cannot obscure the simple fact that at present the property consists of a tract of 109 substantially contiguous lots susceptible to development on an integral basis. It will become progressively less susceptible to such development as lots are sold off until, at some point, integral development will be precluded (See Appellants' Op. Br. pp. 22-23, 31-32). Williams claim that this is not a situation in which "a filling station could be constructed in the middle of what might otherwise be a golf course", while true, merely means that the order of sale could be even more outrageous if circumstances were different; that does not make it acceptable under existing circumstances.[10]

Williams' assertion that the factual basis for Metropolitan's claim that its substantive rights will be impaired by the order of sale consists "almost exclusively of speculation" (Answering Brief of Appellee Williams Construction Company, p. 17) reflects both ig-

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[10]Williams' suggestion that Metropolitan's opposition to the orders in question is motivated by a desire to secure for itself the surplus over Metropolitan's indebtedness which such a lot by lot sale of the tract would allegedly produce (Answering Brief of Appellee Williams Construction Company, pp. 11-12) is presumptuous and totally without evidentiary support. Indeed, there is evidence directly to the contrary: when Metropolitan felt that there was a likelihood that it would acquire the lots through purchase at foreclosure, it expressed a clear desire to resell the entire tract as a tract [See R. T. p. 370, line 2, to p. 371, line 9; R. T. p. 411, lines 3-16; R. T. p. 421, lines 3-9]. Furthermore, the foreclosure of Metropolitan's deed of trust would occur at a public sale. If this alleged "third of a million dollar profit" is such a lure to Metropolitan as Williams purports to believe, surely it would attract others also; and a third party might well wind up buying the tract.

norance of the content of the record on appeal and a misconception of Metropolitan's position.

The statement that "[t]here is no evidence that the time of sale [of the lots on an individual basis] would necessarily be 'three, four or five years'" (*ibid.*) is flatly untrue. Taylor Dark, an expert witness, testified based upon detailed land development and demographic studies that approximately four years would be required to sell off the lots [R. T. p. 279, line 8, to p. 286, line 9].

If that were not enough, we have Williams' own experience. Harold E. Williams, the president of Williams Construction Company, testified that for a protracted period prior to the commencement of Chapter XI proceedings, he made intensive efforts to sell the lots:

> "Q. [by Metropolitan's counsel] During what other times prior to January 27, 1966 did you make constant efforts to dispose of the 109 lots or any of them?
>
> A. [by Williams] *All the time that I had anyone to talk about it*" [R. T. p. 168, lines 15-19; emphasis added].

Several brokers were employed, one of whom had an exclusive listing for approximately six months and the other an exclusive listing for approximately three months. There is no evidence that these brokers were anything less than diligent in their sales efforts, and by Williams' own admission one of the brokers, Agnes Kerr, "ran advertising and made the normal sales efforts" and "impressed [him, Williams] with her approach to the area" [R. T. p. 169, lines 1-12; R. T. p. 170, lines 1-15; R. T. p. 171, lines 4-25].

What was the measure of Williams' success? A quotation from the Answering Brief of Appellee Williams Construction Company, page 16, is a complete answer to that question:

> "Eight of the lots of the original tract were sold in the first six months of 1965 . . ."

(While twelve other lots were sold at various times during 1965, most of these were not sales at price levels which would yield a surplus over and above Metropolitan's encumbrance; one of the lots was given in satisfaction of an indebtedness and others were sold at what Harold Williams described as "absolute cost" [R. T. p. 207, line 20, to p. 208, line 3; R. T. p. 171, line 26, to p. 177, line 17].

In other word, Williams was able to sell an average of one and one-third lots per month. There is nothing whatever in the record before this court to suggest that a receiver in bankruptcy would be any more successful than Williams, whose inability to sell the lots was what evidently drove it to recourse to Chapter XI proceedings. Yet at the sales rate set by Williams' own experience, *approximately seven years would be required to sell off the entire tract.*

Williams is correct in its assertion that "[t]here is no evidence to indicate that the value of the unsold lots will decrease as more lots are sold" (*ibid.*). But Metropolitan never claimed that such a decrease in value would take place. Williams is glibly answering an argument that Metropolitan never made.[11]

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[11]What Metropolitan did say is that probably the lots remaining after an unsuccessful sales program would very likely be the least desirable and least saleable in the tract (Appellants' Opening Brief, p. 32). Lots are obviously not fungible; each is unique and possesses attributes which affect its desirability and, hence, saleability. Undoubtedly factors such as price and individual pref-

(This footnote is continued on the next page)

The thrust of Metropolitan's position with regard to its situation in the event the receiver should give up the sales program in the middle is not that there will be insufficient security for Metropolitan's loan—though this is clearly a risk—but, rather, that Metropolitan will be left with a different security than that for which it contracted (See Appellants' Op. Br. pp. 22-23, 31-32.)[12]

Finally, Williams considers the "potential time delay", as Williams euphemistically describes it, in liquidating Williams' indebtedness to Metropolitan which the orders in question entail. It complacently notes that "there is a certain delay inherent in any extension of secured credit to a debtor who may ultimately be compelled to resort to the assistance of the bankruptcy law" and "the concept of fair market value necessarily implies a reasonable time in which to make the sale" (Answering Brief of Appellee Williams Construction Company, p. 18).

What Williams apparently does not comprehend, however, is that the source of "that certain delay" experienced when a debtor has recourse to bankruptcy proceedings is the power of the bankruptcy court to restrain secured creditors from foreclosing their security

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erence are of some significance, but anyone who has ever been to a department store sale on the second day knows that the "picking over" process is an ever present phenomenon of the commerical world, as applicable to lots as to lingerie.

[12]While "[t]here is no evidence to indicate that all of the lots *cannot* be sold on a lot by lot basis" (Answering Brief of Appellee Williams Construction Company, p. 17; emphasis added), Metropolitan has no assurance that they *can* be sold, at least at the price levels necessary to pay off Metropolitan in full. *In Re Beardsley,* 38 F. Supp. 799, 803 (D.C. Md. 1941). (See Appellants' Op. Br. p. 32).

so as to preserve the *status quo* and prevent interference with its jurisdiction. The power does not permit the bankruptcy court to abridge the *substantive* legal rights of a secured creditor (See Appellants' Op. Br. p. 24, note 7).

It is likewise true that "the concept of fair market value necessarily implies a reasonable time in which to make the sale". But a "reasonable time" to sell what? Suppose that a secured creditor had a lien upon a carloan of a million nuts and bolts. Is the "reasonable time" the time necessary to sell the nuts and bolts individually or is it the time to sell them as a stock?

Williams implies that Metropolitan's objection to the delay in liquidating its indebtedness is less meritorious because of the delay brought about by Metropolitan's efforts to seek review of the orders in question (Answering Brief of Appellee Williams Construction Company, pp. 18-19). Such reasoning is as perverse and indefensible as any of which Metropolitan can conceive. The bankruptcy court entered orders which Metropolitan regards as illegal and prejudicial to its interests. Metropolitan has taken appropriate steps through proper judicial channels to seek review of those orders and to vindicate its position. What Williams is apparently saying, in effect, is that a litigant should forego review of judicial actions when further injury to the litigant may result from the process of review. According to this kind of logic, no one should sue for defamation because the suit gives further currency to the defamatory material. Indeed, a person from whom money has been stolen should not sue to recover it because more money will be spent in the judicial process.

In summary, nothing that Williams says can conceal one simple, unavoidable and dispositive fact—the orders of the bankruptcy court, entered in a Chapter XI proceeding in which only the rights of unsecured creditors may be affected, abridge Metropolitan's substantive legal rights.

V.

There Is No Realizable Equity in the Property.

The sole purpose—and hence justification—for the order restraining Metropolitan from foreclosing its deed or trust was to confer a benefit upon the debtor's estate through the preservation, for the estate, of any surplus which could be realized from the sale of the subject property over and above the amount of the encumbrances. Unless the bankruptcy court has the power to order the sale of the property in a manner which will produce such a surplus—and the only way in which this could conceivably be done is by impairing Metropolitan's substantive rights by ordering a sale of individual lots free of the lien—the justification for the order collapses. Williams' entire argument that there is an equity rests upon the assumption that the bankruptcy court has the power to order such a sale; but as Metropolitan demonstrated in Sections III and IV, *supra*, it does not (See Appellants' Op. Br. pp. 13-25).

VI.

The Orders of the Bankruptcy Court Are Illegal Because Their Implementation Will Cause Metropolitan Substantial Injury.

A court may restrain a secured creditor from foreclosing under its deed of trust or order the sale of encumbered property free and clear of liens only when such orders do not cause substantial injury to the secured creditor. In this case the orders in question in-

jure Metropolitan in several ways. The nature of the injury is shown in Appellants' Opening Brief at pp. 27-32. Nothing in the Answering Brief of Appellee Williams Construction Company in any way vitiates the force of that showing.

Respectfully submitted,

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